



Doc Code: TAD/P/PR/REQ

PTO/SB/33 (07-09)

Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

740123-2

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on February 4, 2011

Signature

Typed or printed name Stuart J. Friedman

Application Number

10/019,518

Filed

December 28, 2001

First Named Inventor

Andre KUDELSKI

Art Unit

2425

Examiner

Idowu, Olugbenga O.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.
Registration number 24,312

301-829-1003

Telephone number

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

February 4, 2011

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



Docket No. 740123-2
Serial No. 10/019,518

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:)
Andre KUDELSKI) Group Art Unit: 2425
Serial No. 10/019,518) Examiner: Idowu, Olugbenga O.
Filed: December 28, 2001)
For: IMPULSE PURCHASE SYSTEM FOR)
PAY TELEVISION)
)

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO at _____ on February 4, 2011.

Signature: _____
Name: Stuart J. Friedman _____

REASONS IN SUPPORT OF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant seeks review of the final rejection of claims 1-3 in the above-captioned application. These claims appear at page 2 of the Amendment filed on September 1, 2010. For the following reasons, the rejection of independent claim 1 under 35 USC 103(a) over Tamer et al in view of Young must fail because these references fail to provide the necessary teachings or suggestions to support a prima facie rejection under 35 USC 103 and because there is clear error in the Examiner's rejection.*

* Although the rejection purports to be "in further view of Deiss" it can be seen that Deiss is never relied upon in the rejection. Examiner Idowu advised counsel on January 26, 2011 that Deiss is not a part of the final rejection of the claims.

The Claimed Invention

Independent claim 1 recites a system for selecting and confirming an impulse purchase for pay TV including a display device for presenting a program listing to the user, means for selection by the user of a program from the listing with the choice being confirmed in the system by an EMM specific to the selection, the EMM comprising conditions for authorizing viewing of the selected program and for canceling such authorization, the program listing comprising date and time of broadcast of an impulse purchase program as well as the EMM responsive to the authorization of the impulse purchased program. The system also includes a security module and means to transfer the EMM specific to the impulse purchase to the security module when the user selects the impulse purchased program and, if the conditions for authorizing viewing of the program selected by the user are met, recording the impulse purchase and granting access to the purchased program. Claims 2 and 3 depend from claim 1.

The Grounds for Rejection

The Examiner's reasons for rejecting claim 1 over Tamer et al in view of Young are set forth in the Office Action of November 23, 2010 at pages 3-4 ("Final Office Action"). Among his reasons for rejecting claim 1, the Examiner asserts that Tamer et al discloses:

--that the EMM which confirms the user's choice of a program is specific to the impulse purchase by the user;-- and

--that the program listing comprises date and time of broadcast of an impulse purchase program.--

It will be appreciated from the discussion which follows that neither of the foregoing is, in fact, disclosed by Tamer et al. Equally significantly, Tamer et al fails to disclose that for short notice authorizations, such as pay TV, the EMM is linked to a program listing which comprises date and time of broadcast and that the EMM which is linked to the program listing is specific to the impulse purchase and comprises conditions which entitle or deny the user access to the impulse purchased program. The Examiner concedes that Tamer et al does not teach a display device for presenting to a user a listing of programs. For this disclosure the Examiner relies upon Young.

Discussion of the Grounds for Rejection

Turning to the Tamer et al reference, it discloses a method and apparatus whereby entitlement control data is arranged in such a manner as to provide denial of entitlements to receive program material on short notice. Column 1, lines 51-54. More specifically, a packet signal stream containing components of a plurality of different television programs passes through a packet transport processor for selecting signal packets having payloads containing a conditional access packet header and a remaining payload of entitlement data, the latter comprising ECMs and EMMs. The EMM information included in these packets is used by the subscriber specific smart card to determine program material to which the subscriber is entitled. EMM entitlement information within these packets may be made geographically specific or group specific (Abstract; column 4, lines 42-67). but for short lead time applications, such as pay-per-view television programming, it is not possible to program EMMs on a subscriber basis (column 5, lines 1-6). Thus, for pay-per-view, Tamer et al does not rely upon EMMs specific to an impulse purchase comprising conditions for granting or denying authorization of viewing. Rather, for pay-per-view, Tamer et al broadcasts a signal stream shortly before airing of a particular program which impresses a layer of access coding, independent of the EMM, in the nature of a payload header, which include groups of bytes containing subscriber specific conditional access codes, in a manner to allow or disallow the respective subscriber receiver from receiving the ECM and EMM entitlement data. A matched filter is arranged to detect a subscriber conditional access code within the payload header. If a match is detected the payload, including the EMM, is passed to the smart card. If a match is not detected, the payload is not accepted by the receiver and the EMM never reaches the smart card. Column 5, lines 6-24. Thus, in Tamer et al, for pay TV entitlement, the EMMs are not specific to the impulse purchase; rather, the packet payload headers are. Likewise, authorization of viewing is controlled by the payload header and not by an EMM linked to the program guide.

In fact, Tamer et al is even more seriously deficient than is set forth hereinbefore in that, when carefully read and understood, it can be seen that Tamer et al fails to teach a "program listing" such as is claimed by applicant. There is no support in Tamer for the Examiner's assertion that Tamer et al teaches a program listing comprising date and time of

broadcast of an impulse purchase program. Indeed, Tamer et al's disclosure at column 3, lines 30-59 makes clear that his "program guide" is not the "program listing" described and claimed by applicant.

In applicant's specification and claims, the term "program listing" or "listing of programs" refers to a textual descriptor of the content of the channels, including such information as date D, time T and description of the transmission Des. See, Figure 3 and page 3, lines 14-18 and 25-28. According to the claimed invention, the program listing also includes an entitlement management message EMM which is specific to the impulse purchase. See, page 3, lines 25-29. By contrast, Tamer's "program guide" is a term expressly defined within Tamer and is itself a program consisting of data which interrelates program signal components through SCIDs, and may include information relating to, for example, subscriber entitlements. See, Tamer at column 3, lines 26-35. Tamer's program guide is a descriptor of the content of the various data sub-streams (SCID) for each program (channel), such as video, audio 1, audio 2, data. See, Tamer at column 3, lines 35-37. This listing is necessary to extract the sub-stream of the desired program (channel). This is why Tamer's program guide is assigned a fixed SCID (see, Tamer at column 3, lines 37-38) so that the receiver knows where to seek the information necessary to filter the data related to a specific program (channel).

Thus, when Tamer et al refers to a "program guide" he is referring to a completely different element or component than the electronic program listing which applicant recites as a program listing in its claims. Accordingly, Tamer et al does not disclose a program listing which is a textual descriptor of the content of the channels, including such information as date, time and description of the transmission, as is taught and recited by applicant, and does not disclose that such a program listing includes an EMM specific to the impulse purchase.

Accordingly, Tamer et al is deficient as a primary reference not only because it fails to disclose a display device for presentation to a user a listing of programs, as conceded by the Examiner, but also because (1) it fails to disclose a program listing such as is claimed by applicant, as well as (2) a program listing which includes an EMM specific to the impulse purchase and which comprises conditions for granting/denying access to the impulse purchased program. In view of these deficiencies, the subject matter of applicant's claims

would not be rendered obvious merely by modifying Tamer et al by including a system that allows available programs to be viewed on a display, as described by Young. There is nothing in the combination of Tamer et al and Young which suggests that an EMM specific to an impulse purchase might advantageously be included in a program listing comprising date and time of broadcast to shorten the cycle time before an impulse purchase is confirmed. (That this is the case is highlighted by the Examiner's position throughout the prosecution, until dropped in the Final Office Action, that Tamer et al and Young fail to teach that Tamer et al's program guide includes, or includes a reference to, the EMM responsive to the authorization of the impulse purchase program. Note the citation for this purpose, and subsequent withdrawal, of Kubota and Deiss in the office actions of November 10, 2009 and June 8, 2010, respectively.). Tamer et al's solution to the problem of providing short notice entitlements is to broadcast a signal stream shortly before airing of a particular program which impresses a payload header containing subscriber access codes on the entitlement information. Tamer et al also provides a conditional access filter preprogrammed to detect specific conditional access codes in the payload header to determine if there is a match with the subscriber, and if there is not to deny access to the program. Applicant's claimed system requires neither the payload headers nor the conditional access filter. Instead, it utilizes EMM's linked to the program listing, which EMMs are specific to the impulse purchase and define conditions for authorization of viewing.

It is, therefore, respectfully urged that independent claim 1 is patentable over the art of record and, therefore, dependent claims 2-3 are likewise patentable. The allowance of claims 1-3 or the reopening of prosecution is, therefore, respectfully requested.